

MEMORANDUM

To: Chairman Randolph and Commissioners Blair, Downey, Karlan and Knox

From: Mark Krausse, Executive Director

Date: November 30, 2004

Subject: Legislative Proposals for 2005

The following proposals are organized by subject. Italics is used to show new language, and strike-out to indicate where language is proposed for deletion from existing law. To summarize, the memorandum presents the following proposals:

A. Campaign Disclosure

- A1. Section 82027.5—Includes San Francisco in “city general purpose committees”**
- A2. Section 82027.5—Defines when committee is city, county or state committee**
- A3. Section 82048.7—Simply inserts a comma in “sponsored committee” definition**
- A4. Section 84100—Only recipient committees are required to have a treasurer**
- A5. Sections 84200.3 and 84200.4—Repeal due to elimination of March primary**
- A6. Sections 84203 and 84204—Clarifies late reporting language of SB 604**

B. Proposition 34 Sections

- B1. Section 85318—Use of general election funds to pay primary election debt**
- B2. Section 85309—Conforms online reporting provisions to late reporting statutes**
- B3. Section 85309.1—Online disclosure of in-kind contributions**

C. Conflict of Interest Disclosure

- C1. Section 82011—Shift code review function for multi-county agencies**
- C2. Section 82034—Exclude defined benefit plans from definition of “investment”**
- C3. Section 87205—Leaving and assuming office within 45 days**
- C4. Section 87500—Where to file statements of economic interests**

D. Advertising Disclosure

- D1. Sections 84502 et seq.--Modifies ad disclosure statutes following litigation**

E. Enforcement

- E1. Sections 83116 and 91005--Enhanced penalties for contribution limit violations**
- E2. Section 91007—Service of civil suit on Commission prerequisite for relief**

F. Conflicts Consolidation

- F1. Government Code 1090 Pilot Project**
- F2. Move Public Contract Code conflict sections to PRA**

A. Campaign Disclosure

A1. Section 82027.5—“General Purpose Committee.” Amend the definition of “city general purpose committee” in section 82027.5(d) to include committees active in a consolidated city and county--San Francisco. The San Francisco Ethics Commission staff has expressed frustration that, because section 82017 defines “county” to include a city and county, general purpose committees active in San Francisco do not have to file pre-election campaign statements in connection with San Francisco elections. As county general purpose committees, these committees do not file pre-election statements except in connection with state election dates.

(d) A “city general purpose committee” is a committee to support or oppose candidates or measures voted on in only one city, *or in one consolidated city and county.*

A2. Section 82027.5—“General Purpose Committee.” Amend this section to specify what percentage of a committee’s activity makes it a “state,” “county,” or “city” general purpose committee. This draft considers where a majority of the committee’s funds, exclusive of overhead, have been spent, and looks at the current year and previous calendar year for purposes of calculating the percentage.

(a) “General purpose committee” means all committees pursuant to subdivisions (b) or (c) of Section 82013, and any committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose more than one candidate or ballot measure, except as provided in Section 82047.5.

(b) A “state general purpose committee” is a committee *that:*

(1) *Does not meet the thresholds in either subdivision (c) or (d); or*

(2) *Makes expenditures to support or oppose candidates or measures voted on in a state election, or in more than one county, including contributions to state general purpose committees, which total more than 50 percent of the contributions and independent expenditures made by the committee.*

(c) A “county general purpose committee” is a committee *whose expenditures* to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county, *including contributions to county general purpose committees in the same county, total more than 50 percent of the contributions and independent expenditures made by the committee.*

(d) A “city general purpose committee” is a committee *whose expenditures* to support or oppose candidates or measures voted on in only one city *or in one consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county, total more than 50*

percent of the contributions and independent expenditures made by the committee.

(e) For purposes of calculating the percentage set out in subdivisions (b) through (d), contributions and expenditures made to support or oppose candidates, measures, or committees during the current calendar year and the previous calendar year will be counted. The percentage will be calculated at the end of each semi-annual period in which the committee is required to file a campaign statement. A committee pursuant to subdivisions (b) or (c) of Section 82013 is not required to count contributions or expenditures made during a prior calendar year in which the committee was not required to file campaign statements.

Should the commission choose to sponsor both of the above amendments, a dynamic version of the proposed changes to section 82027.5 will be drafted to incorporate both amendments.

A3. Section 82048.7—“Sponsored Committee.” Amend section 82048.7(b)(3) to add a missing comma. The Technical Assistance Division has received calls on this missing punctuation.

(a) “Sponsored committee” means a committee, other than a candidate controlled committee, which has one or more sponsors. Any person, except a candidate or other individual, may sponsor a committee.

(b) A person sponsors a committee if any of the following apply:

(1) The committee receives 80 percent or more of its contributions from the person or its members, officers, employees, or shareholders.

(2) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

(3) The person, alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee.

(4) The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.

A4. Section 84100—Treasurer. Amend section 84100 to clarify that only recipient committees are required to have a treasurer.

Every committee *pursuant to Section 82013(a)* shall have a treasurer. No expenditure shall be made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents. No contribution or expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer.

A5. Repeal Sections 84200.3 and 84200.4—Filings in Connection with March State Primary Elections. These two sections were added to the Act in 1999 to require additional and earlier campaign filings in connection with a March state primary election. Now that the primary has been moved to June, there is no longer a need for candidates and committees to file a pre-election report in October of the prior odd-numbered year, or to file the prior year's December semi-annual report on January 10 rather than January 31.

Candidates and committees involved in the June state primary will file the second odd-year semi-annual statement on January 31 rather than January 10, and will return to the June primary pre-election filing schedule specified in section 84200.7 (due dates on March 22 and 12 days prior to the primary).

A6. Sections 84203 and 84204—Late Contribution and Late Independent Expenditure Reports. Amend the late reporting sections 84203(e) and 84204(e) to clarify the late reporting provisions of SB 604.

84203(e): The report required pursuant to this section is not required *to be filed by a candidate or committee that has for contributions disclosed the late contribution* pursuant to subdivision (a) or (b) of Section 85309.

84204(e): ~~The report required pursuant to this section is not required for any committee filing reports pursuant to Section 85500.~~ *Expenditures that have been disclosed by candidates and committees pursuant to Section 85500 are not required to be disclosed pursuant to this section.*

B. Proposition 34 sections

B1. Section 85318—Use of General Election Funds to Pay Primary Election Debt. We have received, and anticipate receiving in the future, advice requests related to the use of campaign funds remaining after the general election to pay debt from the primary election. Because section 85318 requires that contributions raised for the general election prior to the primary election must be set aside and used for the general election, the statute may need to be amended if the Commission wishes to allow candidates to use these remainder funds to pay primary election debts.

(a) A candidate for elective state office may raise contributions for a general election prior to the primary election, and for a special general election prior to a special primary election, for the same elective state office if the candidate sets aside these contributions and uses these contributions for the general election or special general election. If the candidate for elective state office is defeated in the primary election or special primary election, or otherwise withdraws from the general election or special general election, the general election or special general election funds shall be refunded to the contributors on a pro rata basis less any expenses associated with the raising and administration of general election or special general election contributions. Notwithstanding Section 85201, candidates for elective state office may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections.

(b) Following the general election or special general election, a candidate for elective state office must use contributions received in connection with the general election or special general election, which are in excess of net debt outstanding from the general election, to pay net debt outstanding, if any, from the primary election or special primary election.

B2. Section 85309—State Candidate and Ballot Measure Committee Online Reports. Amend section 85309 to make reporting consistent with other reporting provisions, including section 84203 for late contributions. (See proposal A6.) The amendments also clarify that the election cycle reporting provision is applicable during the 90 days prior to the election in which the candidate or measure is being voted on, not any state election.

85309. (a) In addition to any other report required by this title, a candidate for elective state office who is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution ~~of~~ *totaling* one thousand dollars (\$1,000) or more received during ~~an~~ *the* election cycle *in which the candidate is being voted on*. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 24 hours of receipt of the contribution.

(b) In addition to any other report required by this title, any committee primarily formed to support or oppose one or more state ballot measures that is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution ~~of~~ *totaling* one thousand dollars (\$1,000) or more received during ~~an~~ *the* election cycle *in which the ballot measure is being voted on*. Those reports

shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 24 hours of receipt of the contribution.

(c) In addition to any other report required by this title, a candidate for elective state office who is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution ~~of~~ *totaling* five thousand dollars (\$5,000) or more received at any time other than during an election cycle *in which the candidate is being voted on*. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 10 business days of receipt of the contribution.

(d) In addition to any other report required by this title, a committee primarily formed to support or oppose a state ballot measure that is required to file reports pursuant to Section 84605 shall file online or electronically with the Secretary of State a report disclosing receipt of a contribution ~~of~~ *totaling* five thousand dollars (\$5,000) or more received at any time other than during an election cycle *in which the ballot measure is being voted on*. Those reports shall disclose the same information required by subdivision (a) of Section 84203 and shall be filed within 10 business days of receipt of the contribution.

(e) A contribution need not be reported nor shall it be deemed accepted pursuant to this section if it is not cashed, negotiated or deposited and is returned to the contributor prior to the applicable reporting deadline established in this section.

B3. Add Section 85309.1—Online Disclosure of In-Kind Contributions. This amendment will make the 24-hour reporting requirement for in-kind contributions received during the 90-day election cycle consistent with the reporting requirements for in-kind contributions received during the late reporting period under section 84203.3.

(a) A candidate or committee that makes an in-kind contribution totaling \$1,000 or more to a candidate for elective state office or a state ballot measure committee during an election cycle in which the candidate or ballot measure is being voted on shall notify the recipient in writing of the value of the in-kind contribution. The notice must be received by the recipient within 24 hours of the time the contribution is made.

(b) A report filed pursuant to subdivision (a) or (b) of Section 85309 by the recipient of an in-kind contribution is deemed timely filed if it is received by the Secretary of State within 48 hours of the time the contribution is received.

C. Conflict of Interest Disclosure

C1. Section 82011—Shift Code Review Function for Multi-county Agencies.

During the 2004-05 budget process, the Department of Finance invited proposals to reduce workload in order to meet the reductions the Commission received. Language was provided to shift the review of the conflict-of-interest codes of multi-county agencies from the Commission to the largest county in each jurisdiction. Finance did not include this language in the Governor's budget or trailer bill package. Staff is now recommending that the Commission sponsor the proposal in order to reduce workload by an approximate equivalent of \$40,000 per year. This will partially offset the \$500,000 cut the Commission took this fiscal year.

(a) The Commission, with respect to the conflict-of-interest code of a state agency other than an agency in the judicial branch of government, ~~or any local government agency with jurisdiction in more than one county.~~

Add: *(i) The board of supervisors of the county with the largest number of residents, with respect to any local government agency with jurisdiction in more than one county.*

C2. Section 82034—Exclude defined benefit plans from “investment.”

Amend the definition of “investment” to exclude defined benefit pension plans (i.e., PERS, STRS, 1937 Act plans, etc.). Payments from these plans are already excluded from the definition of “income.” We also have excluded them from disclosure as investments in the *Elmore* opinion (4 FPPC 8) and advice (*McMurtry* Advice Letter, No. A-99-058).

“Investment” means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000). The term “investment” does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, *interest in a defined benefit pension plan qualified under*

Internal Revenue Code Section 401(a), or any bond or other debt instrument issued by any government or government agency.

Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater. The term “parent, subsidiary or otherwise related business entity” shall be specifically defined by regulations of the Commission.

C3. Section 87205—Leaving and Assuming Office Within 45 days. Amend section 87205 to increase the 30-day exception for filing leaving and assuming office statements to 45 days. This will eliminate paperwork for us when a legislator leaves office in December, and is sworn in to a statewide office more than 30 but fewer than 45 days later.

87205. A person who completes a term of an office specified in Section 87200 and within ~~30~~ 45 days begins a term of the same office or another such office of the same jurisdiction is not deemed to assume office or leave office.

C4. Section 87500—Where to File Statements of Economic Interests. The following two amendments clarify the place of filing for city treasurer and judicial candidates.

(f) Persons holding the office of city manager or, if there is no city manager, the chief administrative officer, the city treasurer, and candidates for and persons holding the office of city council member, *city treasurer*, city attorney, and mayor -- one original with the city clerk who shall make and retain a copy and forward the original to the Commission which shall be the filing officer.

(i) Judges; ~~and court commissioners, and candidates for the office of judge~~ -- one original with the clerk of the court who shall make and retain a copy and forward the original to the Commission which shall be the filing officer. *Original statements for candidates for the office of judge shall be filed with the person with whom the candidate’s declaration of candidacy is filed, who shall retain a copy and forward the original to the Commission which shall be the filing officer.*

D. Advertising Disclosure

D1. Modifies Ad Disclosure Statutes Following Litigation. The amendments below are proposed following the successful request for injunctive relief brought by the major political parties just prior to the general election. Although staff continues to believe that the statutes are constitutional, we propose alternative language for general purpose committees. The first amendment—to section 84502—proposes a kind of

“negative check off” approach, allowing donors to general purpose committees to specify in writing that their contributions shall not be used to pay for an advertisement.

The amendment to section 84503 adds the language “that is paid for by a committee” to eliminate the need for section 84506, which is repealed. The phrase “for or against any ballot measure” is deleted as a redundancy, since the definition of “advertisement” in section 84501 includes ads supporting or opposing candidates and measures. The amendment also incorporates the committee name requirement from subdivision (c) of section 84504. In the proposed amendment to 84504, that subdivision is then repealed.

Finally, section 84504 is proposed to be amended consistent with Commission regulations providing that the “economic or other special interest” disclosure in the committee name is required only of primarily formed committees.

§ 84502. Cumulative Contributions.

(a) “Cumulative contributions” means the cumulative contributions received by a committee beginning 12 months prior to the date the committee made its first expenditure to qualify, support, or oppose the measure and ending within seven days of the time the advertisement is sent to the printer or broadcast station.

(b) A person whose cumulative contributions to a primarily formed committee are \$50,000 or more is deemed have authorized and paid for the advertisement by the committee.

(c) A person whose cumulative contributions to a general purpose committee are \$50,000 or more is deemed to have authorized and paid for an advertisement by the committee, unless the contributor specifies in writing, prior to an expenditure of his or her contribution or contributions, that his or her funds shall not be used for an advertisement or advertisements supported or opposed by the committee. A committee that receives written notice pursuant to this subdivision prior to making a payment for an advertisement shall not use funds from the contributor for an advertisement.

§ 84503. Disclosure; Advertisement For or Against Ballot Measures.

(a) Any advertisement ~~for or against any ballot measure that is paid for by a committee~~ shall include a disclosure statement identifying *the committee by name* and any person whose cumulative contributions *to the committee* are fifty thousand dollars (\$50,000) or more.

(b) If there are more than two ~~donors~~ *contributors* of fifty thousand dollars (\$50,000) or more, the committee is only required to disclose the highest and second highest in that order. In the event that more than two ~~donors~~ *contributors* meet this disclosure threshold at identical contribution levels, the highest and second highest shall be selected according to chronological sequence.

§ 84504. Identification of Committee.

(a) Any *primarily formed* committee that supports or opposes one or more ballot measures shall name and identify itself using a name or phrase that clearly identifies the economic or other special interest of its major ~~donors~~ *contributors* of fifty thousand dollars (\$50,000) or more in any reference to the committee required by law, including, but not limited, to its statement of organization filed pursuant to Section 84101.

(b) If the major ~~donors~~ *contributors* of fifty thousand dollars (\$50,000) or more share a common employer, the identity of the employer shall also be disclosed.

~~(c) Any committee which supports or opposes a ballot measure, shall print or broadcast its name as provided in this section as part of any advertisement or other paid public statement.~~

(d) If candidates or their controlled committees, as a group or individually, meet the \$50,000 contribution ~~threshold~~ *thresholds* for a person, they shall be identified by the controlling candidate's name.

§ 84505. Avoidance of Disclosure.

In addition to the requirements of Sections 84503, ~~84504, and 84506, and 84504~~ the committee placing the advertisement or persons acting in concert with that committee shall be prohibited from creating or using a noncandidate controlled committee or a nonsponsored committee to avoid, or that results in the avoidance of, the disclosure of any individual, industry, business entity, controlled committee, or sponsored committee as a major funding source.

§ 84506. Repeal section and include intent language that 84503 now addresses the subject.

§ 84508. Disclosure of One Funding Source on Any Advertisement.

If disclosure of two major contributors is required by ~~Sections 84503 and 84506~~ *Section 84503*, the committee shall be required to disclose, in addition to the committee name, only its highest major ~~donor~~ *contributor* in any advertisement which is:

- (a) An electronic broadcast of 15 seconds or less, or
- (b) A newspaper, magazine, or other public print media advertisement which is 20 square inches or less.

E. Enforcement

E1. Sections 83116 and 91005--Enhanced Penalty for Contribution Limit Violations. In the course of bringing some of the first actions for violations of the contribution limits of Proposition 34, the Enforcement Division pointed up the fact that the \$5,000 administrative penalty available under current law is inadequate to discourage

contributions that exceed the applicable limit by several multiples of that fine. Accordingly, they have provided the following amendment to provide for an administrative penalty of up to the amount of the contribution, and for a civil remedy of up to three-times the amount of the contribution.

§ 83116. When the commission determines that there is probable cause for believing this title has been violated, it may hold a hearing to determine if a violation has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The commission shall have all the powers granted by that chapter. *When the commission determines that no violation has occurred, it shall publish a declaration so stating.* When the commission determines on the basis of the hearing that a violation has occurred, it shall issue an order that may require the violator to do all or any of the following:

- (a) Cease and desist violation of this title.
- (b) File any reports, statements, or other documents or other information required by this title.
- (c) ~~Pay a monetary penalty of up to five thousand dollars (\$5,000) per violation to the General Fund of the state. When the Commission determines that no violation has occurred, it shall publish a declaration so stating.~~ *For violating any provision of this title, except Sections 85301, 85302, and 85303, pay a monetary penalty to the General Fund of the state in an amount up to five thousand dollars (\$5,000) per violation. For violating Sections 85301, 85302, or 85303, pay a monetary penalty to the General Fund of the state in an amount up to five thousand dollars (\$5,000) per violation or the amount of the contribution unlawfully made or received, whichever amount is greater.*

§ 91005. add: *(c) Any person who makes or receives a contribution in violation of Chapter 5 of this title is liable in a civil action brought by the Commission for an amount up to three times the amount of the unlawful contribution.*

E2. 91007—Make Service of a Copy of Civil Complaint on Commission a Prerequisite of Relief. It is not uncommon for the Commission to learn of PRA-related litigation through the news media. This proposal would amend the current (and often ignored) requirement that the Commission be provided a copy of any complaint to make service of the copy a prerequisite of relief.

91007. (a) Any person, before filing a civil action pursuant to Sections 91004 and 91005, must first file with the civil prosecutor a written request for the civil prosecutor to commence the action. The request shall include a statement of the grounds for believing a

cause of action exists. The civil prosecutor shall respond to the person in writing, indicating whether he or she intends to file a civil action.

[. . . Language omitted for display purposes only.]

(b) Any person filing a complaint, cross-complaint or other initial pleading in a civil action pursuant to Sections 91003, 91004, 91005, or 91005.5 shall, within 10 days of filing the complaint, cross-complaint, or initial pleading, serve on the Commission a copy of the complaint, cross-complaint, or initial pleading or a notice containing all of the following:

- (1) The full title and number of the case.
- (2) The court in which the case is pending.
- (3) The name and address of the attorney for the person filing the complaint, cross-complaint, or other initial pleading.
- (4) A statement that the case raises issues under the Political Reform Act.

~~(c) No complaint, cross-complaint, or other initial pleading shall be dismissed for failure to comply with subdivision (b).~~

(c) No relief, temporary or permanent, shall be granted until a copy of the pleading has been furnished to the Fair Political Practices Commission in accordance with subdivision (b).

F. Conflicts Code Consolidation

F1. Government Code 1090 Pilot Project—Following substantial public input, staff presented the Commission with a conceptual proposal to begin providing written guidance on Government Code section 1090 and related statutes through a pilot project. This language embodies the details of that pilot project as negotiated with the League of California Cities, the Public Employees Retirement System (CalPERS) and other stakeholders.

§ 83114.1 This article may be cited and shall be known as the Government Code section 1090 Pilot Project to Enhance Compliance with the Ban on Public Officials Having a Financial Interest in Public Contracts

§ 83114.2. The Legislature finds and declares all of the following:

(a) A person cannot serve two masters simultaneously” ([Thomson v. Call \(1985\) 38 Cal. 3d 633, 637 \[214 Cal. Rptr. 139, 699 P.2d 316\]](#)).

(b) The duties of public office demand the absolute loyalty and undivided, uncompromised allegiance of the individual that holds

the office. (*Thomson v. Call*, *supra*, 38 Cal. 3d at p. 648; *Stigall v. City of Taft* (1962) 58 Cal. 2d 565, 569 [25 Cal. Rptr. 441, 375 P.2d 289].)

(c) An impairment of impartial judgment can occur in even the most well-meaning men when their personal economic interests are affected by the business they transact on behalf of the Government. (*Stigall v. City of Taft*, *supra*, 58 Cal. 2d at p. 570, quoting *United States v. Mississippi Valley Generating Co.* (1961) 364 U.S. 520, 549-550 [5 L. Ed. 2d 268, 288, 81 S. Ct. 294].)

(d) Conflict-of-interest statutes should be aimed at eliminating temptation, avoiding the appearance of impropriety, and assuring the government of the officer's undivided and uncompromised allegiance. (*Thomson v. Call*, *supra*, 38 Cal. 3d at p. 648.)

(e) The objective of conflict-of-interest statutes should be to remove or limit the possibility of any personal influence, either directly or indirectly which might bear on an official's decision. (*Stigall v. City of Taft*, *supra*, 58 Cal. 2d at p. 569, italics in original; see also *People v. Vallerger* (1977) 67 Cal. App. 3d 847, 865 [136 Cal. Rptr. 429]; *People v. Watson* (1971) 15 Cal. App. 3d 28, 39 [92 Cal. Rptr. 860].)

(f) In enacting the conflict-of-interest provisions the Legislature should not be concerned with the technical terms and rules applicable to the making of contracts, but instead should seek to establish rules governing the conduct of governmental officials. (*Stigall v. City of Taft*, *supra*, 58 Cal. 2d at p. 569.) Accordingly, those provisions shall not be given a narrow and technical interpretation that would limit their scope and defeat the legislative purpose. (*Id.* at pp. 569, 571; *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal. App. 2d 222, 237 [69 Cal. Rptr. 251].)

(g) The fact that the officer's interest might be small or indirect is immaterial so long as it is such as deprives the [state] of his overriding fidelity to it and places him in the compromising situation where, in the exercise of his official judgment or discretion, he may be influenced by personal considerations rather than the public good. (*Terry v. Bender* (1956) 143 Cal. App. 2d 198, 207-208 [300 P.2d 119].)

§ 83114.4. (a) The Government Code section 1090 Pilot Project to Enhance Compliance with the Ban on Public Officials Having a Financial Interest in Public Contract is hereby established.

(b) The Fair Political Practices Commission shall be the state agency responsible for implementing the Government Code section 1090 Pilot Project to Enhance Compliance with the Ban on Public Officials Having a Financial Interest in Public Contract

§ 83114.5. (a) During the pilot period, the Commission will have limited jurisdiction over Government Code section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, and 1091.5. In addition to the authority granted to the Commission under section 83114, the Commission shall have the authority to provide written opinions on the application of Government Code section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, and 1091.5 to public officials as follows:

(1) Any person may request the Commission to issue an opinion with respect to his duties under section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, and 1091.5.

(2) The Commission shall, within 14 days, either issue the opinion or advise the person who made the request whether an opinion will be issued.

(3) The Commission will forward a copy of the opinion request to the Attorney General's office, the local district attorney and local or agency legal counsel prior to proceeding with a draft opinion;

(4) The opinion, when issued shall be evidence of good faith conduct in any other civil or criminal proceeding, if the requester disclosed truthfully all the material facts, and committed the acts complained of in reliance on the advice.

(5) The Commission shall have no enforcement authority under the pilot project.

§ 83114.8. (a) Funding for the Pilot Project shall be provided in the 2005-06 Budget Act. The Commission shall be given sufficient additional funding to deal with the increased workload (including the educational component). The Pilot Project shall begin on January 1, 2006.

(b) No local jurisdiction shall be required to participate in the pilot project. This article shall have no fiscal impact on any local jurisdiction.

§ 83114.9. This article shall become inoperative on July 31, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

F2. Move Public Contract Code Conflict Sections to PRA—Also arising out of the Commission's conflicts consolidation discussions was a proposal to move various provisions of the Public Contracts Code relating to conflicts. The following is the draft language developed by the Legal Division for that purpose. The intent behind the new language is to incorporate these statutes into the Political Reform Act and to adapt the terminology of the statutes to the Act's terminology, without significantly changing the scope and effect of the statutes. The language is preliminary and subject to change as

additional feedback is obtained from interested parties. Section numbers stricken are references to the Public Contracts Code, and Government Code sections are assigned in their stead.

~~10410-87415.~~ No officer or employee in the state civil service or other appointed state official state agency official shall have an economic interest in any business entity, nonprofit organization, or receive income from any entity or individual operating a program engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, or sponsored and funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer's or employee's regular state employment.

(b) No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.

(c) *The requirements of this section are in addition to those of Government Code section 1090.*

~~10411.~~ (a) No retired, dismissed, separated, or formerly employed person of any state agency or department employed under the state civil service or otherwise appointed to serve in state government may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left state employment.

~~—(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person employed under state civil service or otherwise appointed to serve in state government may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter he or she was involved with prior to leaving state service.~~

87401.2 (a) *No former state administrative official, for two years after the termination of his or her state employment or term of office, shall enter into a contract with the State of California if the*

former employee participated in any decisions related to the contract while employed in any capacity by any state agency or department.

(b) No former state administrative official, for 12 months after the termination of his or her state employment or term of office, shall enter into a contract with the State of California if the former employee was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation.

(c) The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter he or she was involved with prior to leaving state service.

~~10420.~~ (d) Every contract or other transaction entered in violation of any provision of this chapter is void, unless the violation is technical or nonsubstantive. ~~10421.~~ The state, or any person acting on behalf of the state, may bring a civil action seeking a determination by the Superior Court that a contract or other transaction has been entered in violation of any provision of this chapter. If the court finds substantial evidence of such a violation, it may issue a temporary injunction to prevent any further dealings upon the contract or other transaction, pending a final determination on the merits of the case. If the action results in a final determination that the contract or other transaction has been entered in violation of this chapter, it shall be void, and the state or person bringing the action shall be awarded costs and attorney's fees. This section shall not be construed to permit an award of costs and attorney fees to the person or entity contracting or otherwise transacting with the state.

~~10422.~~ (e) Any officer or employee of the department who corruptly performs any official act under this chapter to the injury of the state is guilty of a felony. ~~10423.~~ Any person contracting with the state by oral or written contract who corruptly permits the violation of any contract made under this chapter is guilty of a felony.

~~10424.~~ (f) Persons convicted under Section 10422 or 10423 are also liable to the state for double the amount the state may have lost, or be liable to lose by reason of the acts made crimes by this article.